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SANTA BARBARA, CA**Tony Fischer****Attorney at Law**

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February 7, 2008

Mayor Marty Blum and Members of the City Council**City of Santa Barbara**

City Hall—De La Guerra Plaza

Santa Barbara CA 93101

By hand-delivery.

**RE: Notice of Appeal--601 E. Micheltorena (St. Francis project—ABR Review on
January ²⁶~~28~~, 2008****Dear Mayor Blum and Members of the City Council:**

This appeal is filed because:

- (1) ABR, with only five members present, failed to comply with the the items mentioned in St. Francis Friends and Neighbors statement to the ABR dated January 28, 2008 (copy attached);
- (2) ABR violated the law as stated in the letter to the City Council dated January 30, 2008 (copy attached);
- (3) ABR violated its rule against giving preliminary approval prior to Planning Commission/City Council review of the project. This project is a different size, bulk, scale, site design, number and size of buildings, traffic pattern, and increased negative environmental impacts. ABR members were informed that they could proceed without complying with the requirements to read Resolution 06-103 of the City Council and the EIR because their decision would likely be appealed. By so doing, they violated the duty of Members of the ABR as set forth in the Charter, the municipal code and state law.
- (4) As you have learned, the original description of the project provided by the applicant and city staff was in error by understating the amount of residential construction by more than 6,000 square feet.
- (5) The project violates the basic zoning ordinance restrictions related to density. The revised project increases the burdens on the neighborhood and City by an increase in the density, size, bulk and

scale. The project is now proposed at 134,000 square feet of residential and the podium (roof of first floor garages) is increased to 39,652, an increase of 17,000. That results in less available landscaping and open space.

- (6) Project is less compatible with neighborhood.
- (7) Architecture is not in keeping with the standards for Santa Barbara.
- (8) Unknown environmental impacts caused by project changes including but not limited to increased truck trips impacting area traffic, increased noise from loading and truck operations, reduced air quality resulting from the loading and hauling using diesel trucks and equipment. Although city staff and applicant have not provided information to ABR before asking ABR to approve the project, it is estimated that 700 truckloads of material will be removed from the site above the amounts estimated in the EIR.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Tony Fischer", with a stylized flourish extending from the end.

Tony Fischer, Attorney

Representing St. Francis Friends and Neighbors

Date: January 28, 2008

To: Architectural Board of Review

We respectfully request that you ensure the following before this "revised" project receives preliminary approval:

- Each member of ABR read the EIR and the resolution of the City Council (06-103).
- This revised and larger project is subjected to an EIR as required by law. As compared to the original project that was approved by City Council, this project has an additional 13,000 sq. ft. of building space, 17,000 sq. ft. of added podium deck, a decrease in landscaping, along with the relocation and size increase of the underground parking system requiring a significant increase in excavation and hauling. These environmental impacts need to be studied and mitigated.
- The HLC be given adequate time to review this project. A 2-hour, cursory review of this large and complex project does not meet the intent of the City Council resolution. We request the project go back to HLC and ask that they deal specifically with neighborhood compatibility and size of buildings.
- That you can make a finding in good faith that the project is compatible with the neighborhood. This requests evaluation of the size, bulk, scale, density, adverse traffic impacts adverse air quality impacts, excessive noise, excessive grading and other impacts identified in the initial study. Because of the very large underground parking system (which has now increased in size), this project will have the feel of an even larger project with larger buildings and less landscaping and open space than in the original approved project. The goal of sending it to ABR was to make it smaller and more compatible, not larger and less compatible!
- The project complies with the zoning ordinance which required each residential development to have its parking on the same lot. (See Parking Ordinance and Villa Riviera lot.)
- The project has adequate solar built into the system as required by current City policies.
- The project has required ADA access for the circulation patterns within buildings, to and from the project, to and from the commemorative display, and to and from the shuttle stops.
- The project provides adequate space for children to play outdoors.
- Applicant has demonstrated how and where the electrical, water, sewer and garbage disposal systems will be located and how they will function (fix it now.)

- You have disclosed all contacts with the applicant and its team during this review process to the project.
- You have a defined plan showing location and size, bulk and scale for the historical commemorative display for St Francis Hospital.
- You receive drawings showing an adequate response to these concerns.

You are also asked to read and review the first page of ABR Guidelines (attached) which list the goals of the ABR and the duties which you have assumed as appointed officials of the City.

Thank you,

Jim Westby
St. Francis Friends and Neighbors

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January 30, 2008

Mayor Marty Blum and Members of the City Council
City of Santa Barbara
City Hall
Santa Barbara CA 93101

By hand-delivery and email.

RE: 601 E. Micheltorena (St. Francis project—ABR Review.)

Dear Mayor Blum and Members of the City Council:

At the ABR meeting on Monday night, January 28, 2008, the City Attorney was present for part of the meeting. As the Board was deliberating after close of public comment regarding the project, the City Attorney interrupted a point of order request by the undersigned seeking to have the members of the ABR state whether they had read the EIR or Resolution 06-103 of the City Council. The City Attorney simply stated that the five members of the ABR should take advice from him and no one else and that they were not required to read the EIR or Resolution No. 06-103 of the City Council and not required to state if they had read the documents before making a motion and voting on preliminary approval of this project.

That was a direction to violate the law.

Review of this project by ABR, including grading, architecture, site plan, neighborhood compatibility and parking are required by the City Charter, Chapter 28.68 of the Municipal Code, City Resolution 94-064, and the review is listed as a mitigation measure in the EIR in paragraph C on page 30.

Resolution No. 94-064 was adopted on June 14, 1994 and it has been used to guide the City's implementation of CEQA on a regular basis. It provides definitions and procedures to be used by the City of Santa Barbara . On page 1, under definitions, it states:

- "A. City. City means the City of Santa Barbara and includes the City Council, all boards and commissions and department of the City.
- B. Decision-making Body. Decision making body means City Council or any City Board or commission or any City official delegated authority to approve or disapprove a project, including but not limited to, the Planning Commission, Historic Landmarks Commission and Architectural Board of Review.
- C. Environmental Analyst. Staff person in Community Development Department responsible for overseeing local implementation of the California Environmental Quality Act. "

Resolution 94-064 also states:

"Whereas, the State of California Public Resources Code, Section 21082, requires all public agencies to adopt by ordinance, resolution, rule or regulation, objectives, criteria and procedures for the evaluation of projects and preparation of environmental impact reports and negative declarations; and

Whereas, the City of Santa Barbara desires to implement the California Environmental Quality Act of 1970 (CEQA) (starting at section 21000 of the Public Resources Code of the State of California) and the Guidelines for Implementation of the California Environmental Quality Act of 1970 (starting at Section 15000 of Division 6, Title 14 of the California Administrative Code), as each of the same presently exist and as the same may be duly and legally amended:"

Under CEQA, a "decision making body" is defined to mean "any person or group of persons within a public agency permitted by law to approve or disapprove the project at issue." See 14 Cal. Code of Regs. § Section 15356.

14 Cal. Code of Regs. § 15025. States the following:

"Delegation of Responsibilities.

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

- (1) Determining whether a project is exempt.
- (2) Conducting an initial study and deciding whether to prepare a draft EIR or negative declaration.
- (3) Preparing a negative declaration or EIR.
- (4) Determining that a negative declaration has been Completed within a period of 180 days.
- (5) Preparing responses to comments on environmental documents.
- (6) Filing of notices.

(b) **The decision-making body of a public agency shall not delegate the following functions:**

- (1) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.**
- (2) The making of findings as required by Sections 14:15091 and 14:15093.**

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision-making body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form. (Emphasis added.)

CEQA clearly requires decision making officials to review and read and to certify to that fact before making a decision.

At the meeting of the ABR on January 28, 2008, the Staff Planner, Irma Unzueta was present for a limited period of time. Jaime Limon, Supervisor of Planning Process was present after Irma Unzueta left. The Environmental Analyst was not observed in the room and as far as the undersigned is aware, was not watching the proceedings on live TV and was not consulted.

The City Attorney, at the ABR hearing after telling the ABR members to violate the law, further commented that it might not make a difference because their decision would likely be ultimately decided at a higher level. This is a serious breach of responsibility. First, advising any one to violate the law is a problem in itself. Process is important. Informed decisions are critical to good government in addition to being a required step in the process.

Respect for the process is equally important. Without the required information contained in the EIR, ABR's time was wasted because morally and legally the City and the public must ignore its efforts. It is no different than if the ABR approved a set of drawings for a building without looking beyond the cover page.

One would like to believe that the ABR is making an informed decision. If information is not presented as required by law, there is no adequate remedy except to set aside the action and to require full compliance. ABR members appear willing to follow the law and it appears they were waiting to be advised of their legal requirements.

The giver of the advise and direction to the ABR presumed that the violation of CEQA can and will be remedied by an appeal by a third party. If the logic of the City

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Attorney is followed, the City Attorney is clearly stating that it is OK for these decision-making officials to take action and/or to make recommendations based upon a lack of knowledge; the scope of which is required to include a reading of the EIR. It is noted that despite the use of many hours of time at ABR, the basic information in the EIR was not provided to the ABR and the City Planning Supervisor told the ABR to restrict comments about environmental impacts. It is estimated that reading the EIR and public comments about the environmental impacts would have consumed less than 10% of the total time devoted to the review of this project. It would have given them the background information to help them decide the impact of changes urged upon them by the Applicant.

As indicated by conduct below, there are indications that the Applicant and the City Attorney worked together to truncate the review. Was there an "agenda" at the meeting which did not allow for time to read the EIR? All evidence indicates an affirmative answer.

It is also a concern because a policy to ignore a legal requirement is clearly unacceptable. If we are going to leave compliance with the law up to the decision of a third person with ability to pay an appeal fee and prosecute an appeal, it makes a mockery of the system and the law.

It is noted that the City of Santa Barbara is considered the location of the birthplace of the environmental movement as a direct result of the 1969 oil spill. The National Environmental Quality Act was adopted in response to the spill and the visit of national politicians to the site. California adopted its California Environmental Quality Act in 1970. The first EIR's were written in 1970. It is particularly disturbing to have the City Attorney of Santa Barbara advocate a direct violation of the heart of the Environmental Quality Act. As we all know, the heart of the environmental quality acts is to provide a document known as an environmental impact report to all decision makers and to require them to read it and to state on the record that fact. The EIR is not an approval document, it is an information document.

As was pointed out before the City Attorney arrived at the hearing---he didn't indicate how much he had watched on TV--- those present knew the ABR was not reviewing a project which had been seen and reviewed by the Planning Commission or City Council. The members were asked to provide a preliminary approval of a project without the benefit of any EIR written to disclose significant adverse environmental impact caused by the original project and with no environmental review of the new larger project. ABR was also making a decision regarding a larger project with the potential to be less compatible with the neighborhood due to increased size of structures as a result of increased unit size and by combining more units into each building. In addition, one design change proposed and apparently accepted by ABR will cause extensive excavation and hauling of rock and undisturbed soil from the site. No grading plan for this project as presented to ABR was presented. ABR is required by Chapter 22.68 to review all grading plans for a project which involves a tentative map.

Unknown to the ABR due to the instruction to not read the EIR is the fact that the site design and EIR was based upon a representation that the cut and fill would be balanced and that the residential development would be 121,000 square feet and the garage roof would be 22,000 square feet. The current design will result in 134,000 square feet of residential development and a garage roof, called a podium in recent documents, will be 39,000 square feet. (All numbers rounded.) That is an increase in residential construction of 13,000 square feet; not an insignificant amount. The garage is expanded by 17,000 square feet. To achieve the larger garage will require an excavation of an area which is estimated at 13,000 square feet in area and 10 feet deep. That is 130,000 cubic feet—maybe more.

An example of the impacts not studied is that a truck load (typical dump truck) is approximately 5 cubic yards or 135 cubic feet. Obviously, the capacity of a truck can vary based upon the size of the truck and the mix of stone and dirt. At 135 cubic feet per truck, the hauling will require approximately 2000 trips by trucks to and from the site. How many work days or months will be needed? What will be the impact of

this removal operation on air quality, traffic, noise, etc.? The disposal destination is not disclosed by the drawings and was not studied. The only routes are over local streets and the freeway. Even if hauled to the same disposal site to be used for recycling of building materials, the material will logically not remain there. ABR was told to ignore these questions and didn't have the opportunity to find out even the existing conditions in the neighborhood and street as described in the EIR. It is not known if the Applicant has data regarding these matters. An invitation by the Applicant to provide some data to the ABR was ignored apparently because staff had discouraged any consideration of environmental impacts.

The City Council and City Attorney were requested last July to set aside a prior rush to grant preliminary approval. Then, only the Applicant had the data and information necessary to know and reveal the "errors" in the project calculations which were the basis used to describe the project in the EIR. Applicant provided to the public new data in January 2008 regarding these errors and the increase in the size of the project, the excavation required, and the elimination of 7,000 square feet of landscaping, etc. It is not known what staff was given or learned on its own. In July 2007, it was not known that the data provided to City Council was the result of what is now claimed to be "calculation errors." It was also not clear or disclosed that hillside would have to be removed to accommodate the proposed new plan. This current violation of city and state required process is far greater than the violation last summer. It demands an immediate remedy.

As a further consideration, prior to the direction from the City Attorney to not read the EIR, Jaime Limon, who replaced the Staff Planner at the staff table, informed the Chair that comments involving environmental issues such as reading the EIR, the parking lot and density were not relevant and those comments from the public should be restricted. In response, the members of the ABR stopped a speaker from using his two minutes and thereafter the Chair chose to "edit" out material while reading into the record letters from the public. These actions violate the Brown Act, the public meeting policies of the ABR and CEQA.

After the direction from the City Attorney to the ABR to ignore the request of the public that the ABR read the EIR, Mr. Limon was handed a copy of paragraph C. 8 from Resolution 06-103 which states:

C. Design Review for the Condominium Project: The project is subject to the review and approval of the Architectural Board of Review (ABR) unless otherwise stated:

8. Crime Analyst Plan Review. The Developer shall meet with the City Police Department Crime Analyst prior to ABR Preliminary Approval to determine how lighting, locking mechanisms, egress and fencing can be designed and installed to reduce the potential number of calls for police service from occupants of the Real Property."

Mr. Limon was observed taking the document to the City Attorney who conferred with the Cottage Hospital team in attendance. The City Attorney then advised Mr. Limon to proceed without satisfying the condition. The undersigned was not allowed to clarify that his earlier reference to safety issues dealt directly with this condition of approval. It is likely this condition was an attempt by City Council to satisfy concerns with safety created by large garages connected to residential development and this design review by the Crime Analyst was intended to increase the safety of the community.

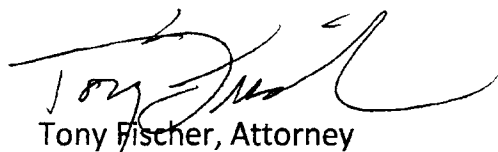
Based upon the events of January 28, 2008, it is clear that after apologies from staff and the applicant's representatives for having shortened and curtailed the opportunity for review of the project by the HLC (another requirement of the EIR which had been missed), it is clear that the documents have not been read by the public officials charged with that responsibility to be informed and/or the persons responsible to advise them in order to obtain compliance with the law and directives of the City Council.

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To: Mayor and City Council Members

Under the circumstance, it is strongly recommended that City Council consult with the Environmental Analyst regarding this matter and allow the Environmental Analyst to employ special counsel to assist in providing advice to the City Council.

Immediate action is requested.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tony Fischer", with a stylized flourish at the end.

Tony Fischer, Attorney
Representing St. Francis Friends and Neighbors

cc :

ABR Members
HLC Members
Planning Commission Members
City Attorney
City Administrator
Chief of Police
CPA
League of Women Voters